FILE COPY

DEC 16 19

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

77593

No. 636

JAMES WALTER CARTER,

Petitioner,

against

CARTER COAL COMPANY, GEORGE L. CARTER, AS VICE-PRESIDENT AND A DIRECTOR OF SAID COMPANY; C. A. HALL, AS SECRETARY-TREASURER AND A DIRECTOR OF SAID COMPANY; JOHN CALLAHAN, JOSEPH W. GORMAN AND WALTER S. DENHAM, AS VICE-PRESIDENTS OF SAID COMPANY; GUY T. HELVERING, INDIVIDUALLY AND AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES; M. HAMPTON MAGRUDER, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES IN AND FOR THE COLLECTION DISTRICT OF MARYLAND; CLARENCE C. KEISER, INDIVIDUALLY AND AS ACTING CHIEF FIELD DEPUTY COLLECTOR OF INTERNAL REVENUE FOR DIVISION NO. 2 OF THE COLLECTION DISTRICT OF MARYLAND; JOHN B. COLPOYS, INDIVIDUALLY AND AS UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF COLUMBIA; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; STANLEY REED, INDIVIDUALLY AND AS ACTING ATTORNEY GENERAL OF THE UNITED STATES AND AS SOLICITOR GENERAL OF THE UNITED STATES; AND LESLIE C. GARNETT, INDIVIDUALLY AND AS UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF COLUMBIA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

FREDERICK H. WOOD,
WILLIAM D. WHITNEY,
RICHARD H. WILMER,
Counsel for Petitioner.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary statement of matter involved	1
Reasons relied upon for the allowance of the writ	6
Prayer for writ	9
Appendix (Bituminous Coal Conservation Act of 1935)	10

Table of Cases Cited.

Adair v. United States, 208 U. S. 161	7
Adkins v. Children's Hospital, 261 U. S. 525	7
Bailey v. Drexel Furniture Company (Child Labor Tax Case), 259 U. S. 20	2, 8
Borden's Co. v. Baldwin, 293 U. S. 194	6
Champlin v. Commission, 286 U. S. 210	7
Chassaniol v. Greenwood, 291 U. S. 584	7
Chesapeake and Ohio Railway v. Conley, 230 U. S. 513	8
Coppage v. Kansas, 236 U. S. 1	7
Delaware, Lackawanna & Western R. R. Co. v. Yurkonis, 238 U. S. 439	7
Furness, Withy & Co., Ltd. v. Yang-Tsze Ins. Asso., Ltd., 242 U. S. 430	9
Gunning v. Cooley, 281 U. S. 90	9
Hammer v. Dagenhart, 247 U. S. 251	7
Heisler v. Thomas Colliery Co., 260 U. S. 245	7
Hill v. Wallace, 259 U. S. 44	2, 3, 8
Kidd v. Pearson, 128 U. S. 1	7
Missouri Pacific Ry. v. Nebraska, 217 U. S. 196	8
Missouri Pacific Ry. v. Tucker, 230 U. S. 340	8
O'Gorman & Young v. Hartford Fire Ins. Co., 282 U. S. 251	6
Oklahoma Operating Co. v. Love, 252 U. S. 331	8
Oliver Iron Co. v. Lord, 262 U. S. 172	7
Pacific Mail S. S. Co. v. Schmidt, 241 U. S. 245	8
Panama Refining Co. v. Ryan, 293 U. S. 388	7
Railroad Retirement Board v. Alton R. Co., 295 U. S. 330	6, 7
Ribnick v. McBride, 277 U. S. 350	7
Schechter Poultry Corp. v. United States, 295 U. S. 495	5, 7
St. Louis, Iron Mt. & Southern Ry. Co. v. Williams, 251 U. S. 63	8
Tyson v. Banton, 273 U. S. 418	7
United Leather Workers v. Herkert, 265 U. S. 457	7
United Mine Workers v. Coronado Co., 259 U. S. 344	7
United States v. Bankers Trust Co., 293 U. S. 548	6
United States v. Constantine, — U. S. — (decided December 9, 1935)	3, 8

Page

Utah Power & L. Co. v. Pfost, 286 U. S. 165 7
Wadley Southern Ry. v. Georgia, 235 U. S. 651 8
Wolff Co. v. Industrial Court, 262 U. S. 522 7
Young, Ex parte, 209 U. S. 123 8

STATUTES CITED.

Act of February 13, 1925, Sec. 8(b) (43 Stat. 936, 938, 940) 6
Bituminous Coal Conservation Act of 1935 (Guffey Act) 1, 10
Sec. 3 2
Sec. 4 ..... 1, 2, 7
Bituminous Coal Conservation Act of 1935 (Guffey Act), Sec. 4, Part II (i) 5
Bituminous Coal Conservation Act of 1935 (Guffey Act), Sec. 4, Part III (a), (b), (g) 5
Bituminous Coal Conservation Act of 1935 (Guffey Act), Sec. 5 2
Sec. 20 2
Bituminous Coal Code, Sec. 14 5
15 5
18 5
Constitution of the United States, Fifth Amendment 5
Tenth Amendment 5
Judicial Code, Sec. 240(a), as amended 6
R. S. 3224 4

OTHER AUTHORITIES CITED.

Equity Rule 70½ 7
Hearings before Senate Judiciary Committee, S. 2176, March 25, 1935, p. 4 6
Rules of the Supreme Court of the United States, Rule 38(2) 9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 636

JAMES WALTER CARTER,

Petitioner,

against

CARTER COAL COMPANY ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved.

This case challenges the validity under the Federal Constitution of the Bituminous Coal Conservation Act of 1935 (commonly known as the Guffey Act and hereinafter referred to as the Act) and is the first test of the validity of that law to reach this Court.

The Act[1] sets up (Sec. 4) a Bituminous Coal Code, membership in which—ostensibly voluntary—is open to all

---

[1] Printed as an appendix hereto.

producers of bituminous coal in the United States (Sec. 5, Sec. 3). Producers assenting to the Code [2] submit to regulation and management by the Federal Government (in the manner therein provided) of the most important and vital matters relating to the management of their business, including, among other things, the wages and hours of their employees and the minimum and maximum prices at which they may sell their coals. Section 3 of the Act applies direct compulsion to enforce the Code by the familiar device (*Bailey* v. *Drexel Furniture Company* (*Child Labor Tax Case*), 259 U. S. 20; *Hill* v. *Wallace,* 259 U. S. 44) of a ruinous financial penalty, in the guise of a tax, which is imposed on those who do not join and obey the Code. That section imposes what purports to be an excise tax of 15% on the sale or other disposal of all bituminous coal produced in the United States, calculated on the basis of the selling price at the mine or (if no sale) the fair market value at the mine, such "tax" being applicable upon all coal sold or otherwise disposed of on and after November 1, 1935, and being payable monthly on and after January 1, 1936 (Sec. 20, Sec. 3). But all bituminous coal producers who accept the Code and who act in compliance therewith receive a drawback in the form of a credit of ninety per centum of the amount of such tax, so that producers not assenting to and complying with the Code pay a "tax" of 15%, while those who do accept and comply with the Code pay a tax of 1½%. The penal and compulsive purpose and operation of this so-called "tax" are beyond dispute (*Bailey* v. *Drexel Furniture Company,*

---

[2] The code was formulated and promulgated on October 9, 1935, by the Commission appointed under the Act. This code (which appears in the record at page 58) is substantially in *haec verba* with section 4 of the Act, with only such changes of language as are necessary to preserve sense.

supra; Hill v. *Wallace, supra; United States* v. *Constantine,* — U. S. —, decided December 9, 1935).

This suit originated on a stockholder's bill brought by the present petitioner to enjoin the company in which he is a minority stockholder and its officers and directors (hereinafter called "company respondents") from assenting to and complying with the Code, and to enjoin the revenue and law-enforcing officers of the Government (hereinafter called "Government officer respondents") from assessing or collecting from the company the "taxes" imposed by the Act upon producers not assenting to or complying with said Code.

The defendant company is a corporation engaged in the business of mining and selling coal at its mines located in Virginia and West Virginia, which, although believing that the Act and the Code are unconstitutional and economically unsound and that acceptance of the Code will adversely affect the business of the company, has nevertheless resolved to join the Code for the sole reason that the penalty tax will ruin and bankrupt it if it does not join (R. 8, 9, 41, 128 (Finding 41)).

Petitioner's bill was filed in the Supreme Court of the District of Columbia upon the day after the Act was signed by the President (R. 208 (Finding 168)) and, although the court has found that the petitioner has proceeded throughout with the utmost diligence (R. 216 B, 208 (Finding 168)), it was not until October 30, 1935, that petitioner was able to obtain a temporary injunction preventing the company from joining the Code (R. 93)[3], and it was not until De-

[3] Temporary injunction against the Government officer respondents was denied, and the temporary injunction granted against the company respondents was upon condition that petitioner give bond in the amount of the tax which, on November 1, 1935, began to accrue daily against

cember 10, 1935, that the final decree, which this petition seeks to review, was obtained (R. 216A).

This final decree (1) dismisses the bill on the merits on the ground that the price-fixing provisions of the Act and the Code are valid and are separable from the wage and hour provisions, held by the court to be invalid; (2) finds that the petitioner brought this suit in good faith and had reasonable grounds for doing so and accordingly grants a permanent injunction excepting the respondent corporation from liability for "taxes" which have accrued up to the date of the trial court's decree; and (3) grants a stay pending the determination of the cause on appeal, by means of an injunction preventing the Company from joining the Code and the Government officer respondents from collecting the "tax" from the Company during the pendency of appellate proceedings.

By its findings of fact and conclusions of law (R. 111) and by oral opinion accompanying its decree (R. 1179), the trial court ruled:

> (1) As to jurisdictional and procedural issues: that the cause involves a substantial adverse controversy presenting a justiciable issue; that the bill is not premature; that the plaintiff is without remedy at law and has established standing in equity entitling him to the relief prayed if his attack upon the constitutionality of the Code be sustained; that R. S. 3224 is not a bar to the relief prayed against the Government officer respondents; and that the suit is not one against the United States (R. 213).

---

the respondent Company at the rate of approximately $1500 per day (R. 93-95). This Court refused certiorari on November 11 last to review the order thus made by the court below upon the applications for temporary injunction (No. 563, present term).

(2) That the labor relations provisions of the Act and of the Code, including the provisions for collective bargaining and for fixing of wages and hours (Act, Sec. 4, Part III (a), (b), (g); Code, Secs. 14, 15, 18) are unconstitutional and invalid as not within the commerce power of the Congress and as violative of the Tenth Amendment (*Schechter Poultry Corp.* v. *United States,* 295 U. S. 495); and that the wage and hour fixing provisions are also invalid for the additional reason that they involve an unconstitutional delegation of authority (*id.*) (R. 213, 214, 1180, 1181)).

(3) That, while the matter is not free from doubt (R. 1181), in the court's opinion the price-fixing provisions of the Act and of the Code constitute a valid exercise of the commerce power of the Congress; involve no invalid delegation of authority; and do not violate the Fifth Amendment (R. 214-215).

(4) That the regulation of unfair methods of competition in Section 4, Part II (i) of the Act lies within the Federal commerce power and does not violate the Fifth Amendment (R. 215).

(5) That the labor provisions are separable from the other provisions of the Act and of the Code; therefore petitioner is not entitled to relief (R. 215).

(6) That, inasmuch as the provisions of the Act with respect to price-fixing and unfair methods of competition are valid, the taxing provisions of the Act are valid (R. 215).

The petitioner has appealed to the United States Court of Appeals for the District of Columbia to review that part of the decree dismissing the bill and otherwise denying the relief prayed by petitioner; and the Government officer respondents have appealed to that court to review that part of the decree granting a permanent injunction relieving the company from liability for the tax for the period of this judicial proceeding up to the date of the decree below; but no proceedings have been had in that court.

This is a petition for writ of certiorari to review the decree of the Supreme Court of the District of Columbia prior to the decision on appeal by the United States Court of Appeals for the District of Columbia, and prior to the hearing or submission of the cause in the latter court (Sec. 240(a), Judicial Code as amended; Sec. 8(b), Act of Feb. 13, 1925, 43 Stat. 936, 938, 940).

Reasons Relied Upon for the Allowance of the Writ.

This case presents questions of the first importance relating to the constitutionality of an Act of Congress which has not heretofore been passed upon by this Court. An early authoritative decision of these questions by this Court is of pressing importance, not only to the parties to this cause but also to the bituminous coal industry generally and to allied industries, and as well to the Federal Government; and the issue of certiorari before the decision of the United States Court of Appeals for the District of Columbia is clearly in order. *United States* v. *Bankers Trust Co.*, 293 U. S. 548; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330; *Hearings before Senate Judiciary Committee*, S. 2176, Mar. 25, 1935, p. 4.

The cause was brought, and has proceeded to final judgment in the court below, with due regard to procedural and jurisdictional requirements. All essential questions of jurisdiction and procedure were fully explored in the tribunal of first instance and there decided in favor of petitioner, so that the decision sought to be reviewed is based squarely upon the merits of the constitutional issues presented. Those issues have been determined only after full trial upon all questions of fact, including questions of economic fact (*Borden's Co.* v. *Baldwin*, 293 U. S. 194; *O'Gorman & Young* v. *Hartford Fire Ins. Co.*, 282 U. S. 251), as well as after full argument upon all questions of fact and of

law; and full findings of fact and conclusions of law have been made by the court below in compliance with Equity Rule 70½ (R. 111).

Aside from the novelty and importance of the issues presented, the decision below should be reviewed for the additional reason, we submit, that it is clearly erroneous and not in accord with the principles of applicable decisions of this Court.

To the extent that the decision below sustains the validity of regulatory provisions of Section 4 of the Act, and of the Code, it is not in accord with the decisions of this Court in the following cases, among others:

Schechter Poultry Corp. v. *United States,* 295 U. S. 495;
Railroad Retirement Board v. *Alton R. Co.,* 295 U. S. 330;
Kidd v. *Pearson,* 128 U. S. 1;
Hammer v. *Dagenhart,* 247 U. S. 251;
United Mine Workers v. *Coronado Co.,* 259 U. S. 344;
Heisler v. *Thomas Colliery Co.,* 260 U. S. 245;
Oliver Iron Co. v. *Lord,* 262 U. S. 172;
Delaware, Lackawanna & Western R. R. Co. v. *Yurkonis,* 238 U. S. 439;
United Leather Workers v. *Herkert,* 265 U. S. 457;
Utah Power & L. Co. v. *Pfost,* 286 U. S. 165;
Champlin v. *Commission,* 286 U. S. 210;
Chassaniol v. *Greenwood,* 291 U. S. 584;
Panama Refining Co. v. *Ryan,* 293 U. S. 388;
Adair v. *United States,* 208 U. S. 161;
Coppage v. *Kansas,* 236 U. S. 1;
Adkins v. *Children's Hospital,* 261 U. S. 525;
Wolff Co. v. *Industrial Court,* 262 U. S. 522;
Tyson v. *Banton,* 273 U. S. 418;
Ribnick v. *McBride,* 277 U. S. 350.

In so far as the decision sustains the validity of the taxing provisions of the Act, it is not in accord with the decisions of this Court in the following cases, among others:

Bailey v. *Drexel Furniture Company* (*Child Labor Tax Case*), 259 U. S. 20;

Hill v. *Wallace*, 259 U. S. 44;

United States v. *Constantine*, — U. S. — (decided December 9, 1935);

Ex parte Young, 209 U. S. 123;

Missouri Pacific Ry. v. *Nebraska*, 217 U. S. 196;

Missouri Pacific Ry. v. *Tucker*, 230 U. S. 340;

Chesapeake and Ohio Railway v. *Conley*, 230 U. S. 513;

Wadley Southern Ry. v. *Georgia*, 235 U. S. 651;

Pacific Mail S. S. Co. v. *Schmidt*, 241 U. S. 245;

St. Louis, Iron Mt. & Southern Ry. Co. v. *Williams*, 251 U. S. 63;

Oklahoma Operating Co. v. *Love*, 252 U. S. 331;

The Supreme Court of the District of Columbia also clearly erred, we submit, in failing to grant permanent injunctions as prayed in the bill upon the finding, without more, that the labor provisions of the Act are invalid; in failing to hold that the several regulatory provisions of the Act and of the Code are inseparable (in particular that the labor and price-fixing provisions are inseparable); in failing to hold that a permanent injunction should issue restraining the assessment and collection of taxes which will accrue up to the date of the final decision of the cause by this Honorable Court, irrespective how the questions as to the validity of the statute, or any of them, be decided; and in numerous other respects, as set forth in the assignments of error filed by your petitioner on his appeal to the United States Court of Appeals for the District of Columbia, including errors in the findings and conclusions and in fail-

ing and refusing to make findings and conclusions requested by your petitioner.

In the interest of brevity (Rule 38, par. 2; *Furness, Withy & Co. Ltd.* v. *Yang-Tsze Ins. Asso. Ltd.*, 242 U. S. 430), petitioner does not at this time set forth all of the points which will be urged at the argument on the merits of this cause should the writ be granted, nor all of the contentions in support of such points; but, in order to comply with the rule of this Court requiring that all issues upon which decision is requested be presented in the petition for certiorari (*Gunning* v. *Cooley*, 281 U. S. 90, 98), petitioner here refers to and incorporates into this petition all of the matters presented in its assignment of errors on the appeal to the United States Court of Appeals for the District of Columbia (R. 233), with the same force and effect as if herein set out in full.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the District of Columbia, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the decree of the Supreme Court of the District of Columbia be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

FREDERICK H. WOOD,
WILLIAM D. WHITNEY,
RICHARD H. WILMER,
Counsel for Petitioner.

APPENDIX TO PETITION FOR CERTIORARI.

[Public—No. 402—74th Congress]

[H. R. 9100]

AN ACT

To stabilize the bituminous coal-mining industry and promote its interstate commerce; to provide for cooperative marketing of bituminous coal; to levy a tax on bituminous coal and provide for a drawback under certain conditions; to declare the production, distribution, and use of bituminous coal to be affected with a national public interest; to conserve the bituminous coal resources of the United States; to provide for the general welfare, and for other purposes; and providing penalties.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby recognized and declared that the mining of bituminous coal and its distribution by the producers thereof in and throughout the United States are affected with a national public interest; that the service of bituminous coal in relation to the industrial activities, the transportation facilities, the health and comfort of the people of the United States; the conservation of bitumnous coal deposits in the United States by controlled production and economical mining and marketing; the maintenance of just and rational relations between the public, owners, producers, and employees; the right of the public to constant and ample supplies of coal at reasonable prices; and the general welfare of the Nation require that the bituminous coal industry be regulated as herein provided.

It is further recognized and declared that all production of bituminous coal and distribution by the producers thereof bear upon and directly affect its interstate commerce and render regulation of all such production and distribution imperative for the protection of such commerce and the national public service of bituminous coal and the normal governmental revenues derivable from such indus-

try; that the excessive facilities for the production of bituminous coal and the overexpansion of the industry have led to practices and methods of production, distribution, and marketing of such coal that waste such coal resources of the Nation, disorganize the interstate commerce in such coal and portend the destruction of the industry itself, and burden and obstruct the interstate commerce in such coal, to the end that control of such production and regulation of the prices realized by the producers thereof are necessary to promote its interstate commerce, remove burdens and obstructions therefrom, and protect the national public interest therein; that practices prevailing in the production of bituminous coal directly affect its interstate commerce and require regulation for the protection of that commerce, and that the right of mine workers to organize and collectively bargain for wages, hours of labor, and conditions of employment should be guaranteed in order to prevent constant wage cutting and the establishment of disparate labor costs detrimental to fair competition in the interstate marketing of bituminous coal, and in order to avoid those obstructions to its interstate commerce that recur in the industrial disputes over labor relations at the mines.

National Bituminous Coal Commission

SEC. 2. (a) There is hereby established in the Department of the Interior a National Bituminous Coal Commission (herein referred to as "Commission"), which shall be composed of five members appointed by the President, by and with the advice and consent of the Senate, for a term of four years or until the prior termination of this title. The Commission shall annually designate its chairman, and shall have a seal which shall be judicially recognized. Any person appointed to fill a vacancy shall be appointed only for the unexpired term of his predecessor in office. The Commission shall have an office in the city of Washington, District of Columbia, and shall convene at such times and places as the majority of the Commission shall determine. The members of the Commission shall have no financial interest, direct, or indirect, in the mining,

transportation, or sale of, or manufacture of equipment for, coal, oil, or gas, or in the generation, transmission, or sale of hydroelectric power, or in the manufacture of equipment for the use thereof and shall not engage in any other business, vocation, or employment. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. The Commission shall, with due regard to the provisions of the civil-service laws or the Classification Act of 1923, as amended, appoint and fix the compensation and duties of a secretary and necessary clerical and other assistants, none of whom shall be related to any member of the Commission by marriage or within the third degree by blood. The members of the Commission shall each receive compensation at the rate of $10,000 per year and necessary traveling expenses. Such Commission shall have the power to make and promulgate all reasonable rules and regulations for carrying out the provisions of this Act, and shall annually make full report of its activities to the Secretary of the Interior for transmission to Congress. Upon all matters within its jurisdiction coming before it for determination, it shall have the power and duty of hearing evidence and finding facts upon which its orders and action may be predicated, and its findings of fact supported by any substantial evidence shall be conclusive upon review thereof by any court of the United States.

(b) (1) There shall be an office in the Department of the Interior to be known as the office of the Consumers' Counsel of the National Bituminous Coal Commission. The office shall be in charge of a counsel to be appointed by the President, by and with the advice and consent of the Senate. The counsel shall have no financial interest, direct or indirect, in the mining, transportation, or sale of, or the manufacture of equipment for, coal, oil, or gas, or in the generation, transmission, or sale of hydroelectric power or in the manufacture of equipment for the use thereof, and shall not engage in any other business, vocation, or employment. The counsel shall receive compensation at the rate of $10,000 per year and necessary traveling expenses.

(2) It shall be the duty of the counsel to appear in the interest of the consuming public in any proceeding before the Commission and to conduct such independent investigation of matters relative to the bituminous coal industry and the administration of this Act as he may deem necessary to enable him properly to represent the consuming public in any proceeding before the Commission. In any proceeding before the Commission in which the counsel has entered an appearance, the counsel shall have the right to offer any relevant testimony and argument, oral or written, and to examine and cross-examine witnesses and parties to the proceeding, and shall have the right to have subpena or other process of the Commission issue in his behalf. Whenever the counsel finds that it is in the interest of the consuming public to have the Commission furnish any information at its command or conduct any investigation as to any matter within its authority, then the counsel shall so certify to the Commission, specifying in the certificate the information or investigation desired. Thereupon the Commission shall promptly furnish to the counsel the information or promptly conduct the investigation and place the results thereof at the disposal of the counsel.

(3) Within the limitations of such appropriations as the Congress may from time to time provide, the counsel is authorized, with due regard to the civil service laws and the Classification Act of 1923, as amended, to appoint and fix the compensation and duties of such assistants and clerks, and is authorized to make such expenditures, as may be necessary for the performance of the duties vested in him.

Tax on Bituminous Coal.

SEC. 3. There is hereby imposed upon the sale or other disposal of all bituminous coal produced within the United States an excise tax of 15 per centum on the sale price at the mine, or in the case of captive coal the fair market value of such coal at the mine, such tax, subject to the later provisions of this section, to be payable to the United States by the producers of such coal, and to be payable monthly

for each calendar month, on or before the first business day of the second succeeding month, and under such regulations, and in such manner, as shall be prescribed by the Commissioner of Internal Revenue: *Provided,* That in the case of captive coal produced as aforesaid, the Commissioner of Internal Revenue shall fix a price therefor at the current market price for the comparable kind, quality, and size of coals in the locality where the same is produced: *Provided further,* That any such coal producer who has filed with the National Bituminous Coal Commission his acceptance of the code provided for in section 4 of this Act, and who acts in compliance with the provisions of such code, shall be entitled to a drawback in the form of a credit upon the amount of such tax payable hereunder, equivalent to 90 per centum of the amount of such tax, to be allowed and deducted therefrom at the time settlement therefor is required, in such manner as shall be prescribed by the Commissioner of Internal Revenue. Such right or benefit of drawback shall apply to all coal sold or disposed of from and after the day of the producer's filing with the Commission his acceptance of said code in such form of agreement as the Commission may prescribe. No producer shall by reason of his acceptance of the code provided for in section 4 or of the drawback of taxes provided in section 3 of this Act be held to be precluded or estopped from contesting the constitutionality of any provision of said code, or its validity as applicable to such producer.

Bituminous Coal Code

SEC. 4. The provisions of this section shall be formulated by the Commission into a working agreement, to be known as the "Bituminous Coal Code", and herein referred to as the "Code." Producers accepting and operating under its provisions are herein referred to as "Code members."

For the purpose of carrying out the declared policy of this Act, the code shall contain the following conditions, provisions, and obligations which will tend to regulate interstate commerce in bituminous coal and transactions directly affecting interstate commerce in bituminous coal:

Part I—Organization and Production.

(a) Twenty-three district boards of coal producers shall be organized. Each district board shall consist of not less than three nor more than seventeen members. The number of members of the district board shall, subject to the approval of the Commission, be determined by the majority vote of the district tonnage during the calendar year 1934 represented at a meeting of the producers of the district called for the purpose of such determination and for the election of such district board; and all known producers within the district shall be given notice of the time and place of the meeting. All but one of the members of the district board shall be producers or representatives of producers truly representative of all the mines of the district. The number of such producer members shall be an even number. One-half of such producer members shall be elected by the majority in number of the producers of the district represented at the aforesaid meeting. The other producer members shall be elected by votes cast in the proportion of the annual tonnage output for the preceding calendar year of the producers in the district, with the right on the part of the producers to vote their tonnage cumulatively: *Provided,* That not more than one officer or employee of any producer within a district shall be a member of the district board at the same time. The remaining member of each district board shall be selected by the organization of employees representing the preponderant number of employees in the industry of the district in question. The term of district board members shall be two years and until their successors are elected.

In case any marketing agency comprising a substantial number of code members in any producing field within a district establishes, to the satisfaction of the Commission, that it has no representation upon the district board and that it is fairly entitled thereto, the Commission may, in its discretion, after hearing, increase the membership of such district board so as to provide for such representation.

Marketing agencies may be established or maintained within any district by a voluntary association of producers within any producing field therein, as such producing field may be defined by the district board, and function under such general rules and regulations as may be prescribed by the district board, with the approval of the Commission, for the purpose of marketing their coal with due respect for the standards of unfair competition as defined in this Act. Each such marketing agency shall impose no unreasonable or inequitable conditions of membership and shall be truly representative of at least one-third of the tonnage of any producing field or group of producing fields.

The term "marketing agency" or "agencies" as used in this Act shall include any trade association of coal producers complying with the requirements of a marketing agency and exercising the functions thereof.

The district boards and marketing agencies shall each have power to adopt bylaws and rules of procedure, subject to approval of the Commission, and to appoint officers from their own membership, to fix their terms and compensation, to provide for reports, and to employ such committees, employees, arbitrators, and other persons necessary to effectuate their purposes. Members of the district board shall serve, as such, without compensation, but may be reimbursed for their reasonable expenses. The territorial boundaries or limits of such twenty-three districts are set forth in the schedule entitled "Schedule of Districts" and annexed to this Act: *Provided,* That the territorial boundaries or limits of any district or districts may be changed, or said districts may be divided or consolidated, after hearing, by the Commission.

(b) The expense of administering the code by the respective district boards shall be borne by those subject to the jurisdiction of such boards, respectively, each paying his proportionate share, as assessed, computed on a tonnage basis, in accordance with regulations prescribed by such boards with the approval of the Commission. Such assessments may be collected by the district board by action in any court of competent jurisdiction.

(c) Nothing contained in this Act shall constitute the members of a district board partners for any purpose. Nor shall any member of a district board be liable in any manner to any one for any act of any other member, officer, agent or employee of the district board. Nor shall any member of a district board, exercising reasonable diligence in the conduct of his duties under this Act, be liable to any one for any action or omission to act under this Act, except for his own willful misfeasance, or for nonfeasance involving moral turpitude.

Part II—Marketing.

The district boards and code members shall accept and be subject to the jurisdiction of the Commission to approve or to fix minimum and maximum prices, as follows:

(a) All code members shall, in their respective districts, report all spot orders to the district board and shall file with it copies of all contracts for the sale of coal, copies of all invoices, copies of all credit memoranda, and such other information concerning the preparation, cost, sale, and distribution of coal as the Commission may authorize or require. All such records shall be held by the district board as the confidential records of the code member filing such information.

Each district board may set up and maintain a statistical bureau, and the district board may require that such reports and other information in this subsection described shall be filed with such statistical bureau in lieu of the filing thereof with the district board.

Each district board shall, from time to time on its own motion or when directed by the Commission, establish minimum prices free on board transportation facilities at the mines for kinds, qualities, and sizes of coal produced in said district, with full authority, in establishing such minimum prices, to make such classification of coals and price variations as to mines and consuming market areas as it may deem necessary and proper. In order to sustain the stabilization of wages, working conditions, and maximum hours of labor, said prices shall be established so as to yield

a return per net ton for each district in a minimum price area, as such districts are identified and such area is defined in the subjoined table designated "Minimum-price area table", equal as nearly as may be to the weighted average of the total costs, per net ton, determined as hereinafter provided, of the tonnage of such minimum price area. The computation of the total costs shall include the cost of labor, supplies, power, taxes, insurance, workmen's compensation, royalties, depreciation, and depletion (as determined by the Bureau of Internal Revenue in the computation of the Federal income tax) and all other direct expenses of production, coal operators' association dues, district board assessments for Board operating expenses only levied under the code, and reasonable costs of selling and the cost of administration.

Minimum-Price-Area Table.

Area 1: Eastern Pennsylvania, district 1; western Pennsylvania, district 2; northern West Virginia, district 3; Ohio, district 4; Michigan, district 5; Panhandle, district 6; Southern numbered 1, district 7; Southern numbered 2, district 8; West Kentucky, district 9; Illinois, district 10; Indiana, district 11; Iowa, district 12; that part of Southeastern, district 13, comprising Van Buren, Warren, and McMinn Counties in Tennessee.

Area 2: Southeastern, district 13, except Van Buren, Warren, and McMinn Counties in Tennessee.

Area 3: Arkansas-Oklahoma, district 14.

Area 4: Southwestern, district 15.

Area 5: Northern Colorado, district 16; southern Colorado, district 17; New Mexico, district 18.

Area 6: Wyoming, district 19; Utah, district 20.

Area 7: North Dakota and South Dakota, district 21.

Area 8: Montana, district 22.

Area 9: Washington, district 23.

The minimum prices so established shall reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal, shall be just and equitable as between producers within the district, and shall have due regard to the interests of the consuming public. The pro-

cedure for establishment of minimum prices shall be in accordance with rules and regulations to be approved by the Commission.

A schedule of such minimum prices, together with the data upon which they are computed, including, but without limitation, the factors considered in determining the price relationship, shall be submitted by the district board to the Commission, which may approve, disapprove, or modify the same to conform to the requirements of this subsection, and such approval, disapproval, or modification shall be binding upon all code members within the district, subject to such modification therein as may result from the coordination provided for in the succeeding subsection (b): *Provided,* That all minimum prices established for any kind, quality, or size of coal for shipment into any consuming market area shall be just and equitable as between producers within the district: *And provided further,* That no minimum price shall be established that permits dumping.

As soon as possible after its creation, each district board shall determine the weighted average of the total costs of the ascertainable tonnage produced in the district in the calendar year 1934. The district board shall adjust the average costs so determined, as may be necessary to give effect to any changes in wage rates, hours of employment, or other factors substantially affecting costs, exclusive of seasonal changes, so as to reflect as accurately as possible any change or changes which may have been established since January 1, 1934. Such determination and the computations upon which it is based shall be promptly submitted to the Commission by each district board in the respective minimum-price area. The Commission shall thereupon determine the weighted average of the total costs of the tonnage for each minimum-price area in the calendar year 1934, adjusted as aforesaid, and transmit it to all the district boards within such minimum-price area. Said weighted average of the total costs shall be taken as the basis for the establishment of minimum prices to be effective until changed by the Commission. Thereafter, upon satisfactory proof made at any time by any district board of a change in excess of 2 cents per net ton of two thousand

pounds in the weighted average of the total costs in the minimum-price area, exclusive of seasonal changes, the Commission shall increase or decrease the minimum prices accordingly. The weighted average figures of total cost determined as aforesaid shall be available to the public.

Each district board shall, on its own motion or when directed by the Commission, establish reasonable rules and regulations incidental to the sale and distribution of coal by code members within the district. Such rules and regulations shall not be inconsistent with the requirements of this section and shall conform to the standards of fair competition hereinafter established. Such rules and regulations shall be submitted by the district board to the Commission with a statement of the reasons therefor, and the Commission may approve, disapprove, or modify the same, and such approval, disapproval, or modification shall be binding upon all code members within the district.

(b) District boards shall, under rules and regulations established by the Commission, coordinate in common consuming market areas upon a fair competitive basis the minimum prices and the rules and regulations established by them, respectively, under subsection (a) hereof. Such coordination, among other factors, but without limitation, shall take into account the various kinds, qualities, and sizes of coal, and transportation charges upon coal. All minimum prices established for any kind, quality, or size of coal for shipment into any consuming market area shall be just and equitable, and not unduly prejudicial or preferential, as between and among districts, and shall reflect, as nearly as possible, the relative market values, at points of delivery in each common consuming market area, of the various kinds, qualities and sizes of coal produced in the various districts; to the end of affording the producers in the several districts substantially the same opportunity to dispose of their coals upon a competitive basis as has heretofore existed. The minimum prices established as a result of such coordination shall not, as to any district, reduce or increase the return per net ton upon all the coal produced therein below or above the minimum return as

provided in subsection (a) of this section by an amount greater than necessary to accomplish such coordination, to the end that the return per net ton upon the entire tonnage of the minimum price area shall approximate and be not less than the weighted average of the total costs per net ton of the tonnage of such minimum price area. Such coordinated prices and rules and regulations, together with the data upon which they are predicated, shall be submitted to the Commission, which may approve, disapprove, or modify the same to establish and maintain such fair competitive relationship, and such approval, disapproval, or modification shall be binding upon all code members within the affected districts. No minimum price shall be established that permits dumping. On the petition of any district board or other party in interest or on its own motion, after notice to the district boards, the Commission may at any time conduct hearings to determine whether the foregoing method of fixing minimum prices under subsection (a) is prejudicial to any district with respect to the fair opportunity of such district to market its coal. Should the Commission so find, and further find that the prejudice cannot be removed through the coordination of minimum prices as provided for in this subsection (b), then the Commission may establish a different basis for determining minimum prices in such district, to the end that fair and competitive prices shall prevail in the marketing of the coal produced in such district: *Provided,* That the minimum prices so established as to any such district shall yield a return, per net ton, not less than the weighted average of the total costs, per net ton, of the tonnage of such district.

(c) When, in the public interest, the Commission deems it necessary to establish maximum prices for coal in order to protect the consumer of coal against unreasonably high prices therefor, the Commission shall have the right to fix maximum prices free on board transportation facilities for coal in any district. Such maximum prices shall be established at a uniform increase above the minimum prices in effect within the district at the time, so that in the aggre-

gate the maximum prices shall yield a reasonable return above the weighted average total cost of the district: *Provided,* That no maximum price shall be established for any mine which shall not return cost plus a reasonable profit.

(d) If any code member or district board, or any State or political subdivision of a State, shall be dissatisfied with such coordination of prices or rules and regulations, or by a failure to establish such coordination of prices or rules and regulations, or by the maximum prices established for him or it pursuant to subsection (c) of this section, he or it shall have the right, by petition, to make complaint to the Commission, and the Commission shall, under rules and regulations established by it, and after notice and hearing, make such order as may be required to effectuate the purpose of subsections (b) and (c) of this section, which order shall be binding upon all parties in interest. Pending final disposition of such petition, and upon reasonable showing of necessity therefor, the Commission may make such preliminary or temporary order as in its judgment may be appropriate, and not inconsistent with the provisions of this Act.

(e) Subject to the exceptions provided in section 12 of this Act, no coal shall be sold or delivered at a price below the minimum or above the maximum therefor approved or established by the Commission, and the sale or delivery of coal at a price below such minimum or above such maximum shall constitute a violation of the code.

Subject to the exceptions provided in section 12 of this Act, a contract for the sale of coal at a price below the minimum or above the maximum therefor approved or established by the Commission at the time of the making of the contract shall constitute a violation of the code, and such contract shall be invalid and unenforceable.

From and after the date of approval of this Act, until prices shall have been established pursuant to subsections (a) and (b) of part II of this section, no contract for the sale of coal shall be made providing for delivery for a period longer than thirty days from the date of the contract.

While this Act is in effect no code member shall make any contract for the sale of coal for delivery after the expiration date of this Act at a price below the minimum or above the maximum therefor approved or established by the Commission and in effect at the time of making the contract.

The minimum prices established in accordance with the provisions of this section shall not apply to coal sold by a code member and shipped outside the domestic market. The domestic market shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market. Maximum prices established in accordance with the provisions of this section shall not apply to coal sold by a code member and shipped outside the continental United States.

(f) All data, reports, and other information in the possession of the National Recovery Administration in relation to bituminous coal shall be available to the Commission for the administration of this Act.

(g) The price provisions of this Act shall not be evaded or violated by or through the use of docks or other storage facilities or transportation facilities, or by or through the use of subsidiaries, affiliated sales or transportation companies or other intermediaries or instrumentalities, or by or through the absorption, directly or indirectly, of any transportation or incidental charge of whatsoever kind or character, or any part thereof. The Commission is hereby authorized, after investigation and hearing, and upon notice to the interested parties to make and issue rules and regulations to make this subsection effective.

(h) All sales and contracts for the sale of coal shall be subject to the code prices herein provided for and in effect at the time of the making of such sales and contracts. The Commission shall prescribe the price allowance to and receivable by persons who purchase coal for resale, and resell it in not less than cargo or railroad carload lots; and shall

require the maintenance by such persons, in the resale of coal, of the minimum prices established under this Act.

Unfair Methods of Competition.

(i) The following practices shall be unfair methods of competition and shall constitute violations of the code:

1. The consignment of unordered coal, or the forwarding of coal which has not actually been sold, consigned to the producer or his agent: *Provided, however,* That coal which has not actually been sold may be forwarded, consigned to the producer or his agent at rail or track yards, tidewater ports, river ports, or lake ports, or docks beyond such ports. Such limitations on the consignment of coal shall not apply to the following classes: Bunker coal, coal applicable against existing contracts, coal for storage (other than in railroad cars) by the producer or his agent in rail or track yards or on docks, wharves, or other yards for resale by the producer or his agent.

2. The adjustment of claims with purchasers of coal in such manner as to grant secret allowances, secret rebates, or secret concessions, or other price discrimination.

3. The prepayment of freight charges with intent to or having the effect of granting a discriminatory credit allowance.

4. The granting in any form of adjustments, allowances, discounts, credits, or refunds to purchasers or sellers of coal, for the purposes or with the effect of altering retroactively a price previously agreed upon, in such manner as to create price discrimination.

5. The predating or postdating of any invoice or contract for the purchase or sale of coal, except to conform to a bona fide agreement for the purchase or sale entered into on the predate.

6. The payment or allowance in any form or by any device of rebates, refunds, credits, or unearned discounts, or the extension to certain purchasers of services or privileges not extended to all purchasers under like terms and conditions, or under similar circumstances.

7. The attempt to purchase business, or to obtain information concerning a competitor's business by concession, gifts, or bribes.

8. The intentional misrepresentation of any analysis or of analyses, or of sizes, or the intentional making, causing, or permitting to be made, or publishing, of any false, untrue, misleading, or deceptive statement by way of advertising, invoicing, or otherwise concerning the size, quality, character, nature, preparation, or origin of any coal bought, sold, or consigned.

9. The unauthorized use, whether in written or oral form, of trade marks, trade names, slogans, or advertising matter already adopted by a competitor, or any deceptive approximation thereof.

10. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract.

11. Splitting or dividing commissions, broker's fees, or brokerage discounts, or otherwise in any manner directly or indirectly using brokerage commissions or jobbers' arrangements or sales agencies for making discounts, allowances, or rebates, or prices other than those determined under this Act, to any industrial consumer or to any retailers, or to others, whether of a like or different class.

12. Selling to, or through, any broker, jobber, commission account, or sales agency, which is in fact or in effect an agency or an instrumentality of a retailer or an industrial consumer or of an organization of retailers or industrial consumers, whereby they or any of them secure either directly or indirectly a discount, dividend, allowance, or rebates, or a price other than that determined in the manner prescribed by this Act.

13. Violations of the provisions of the code.

It shall not be an unfair method of competition or a violation of the code or any requirement of this Act (1) to sell to or through any bona fide and legitimate farmer's cooperative organization duly organized under the laws of

any State, Territory, the District of Columbia, or the United States whether or not such organization grants rebates, discounts, patronage dividends, or other similar benefits to its members, (2) to sell through any intervening agency to any such cooperative organization, or (3) to pay or allow to any such cooperative organization or to any such intervening agency any discount, commission, rebate, or dividend ordinarily paid or allowed, or permitted by the code to be paid or allowed, to other purchasers for purchases in wholesale or middleman quantities.

(j) The Commission shall have jurisdiction to hear and determine written complaints made charging any violation of the code specified in this part II. It shall make and publish rules and regulations for the consideration and hearing of any such complaint, and all interested parties shall be required to conform thereto. The Commission shall make due effort toward adjustment of such complaints and shall endeavor to compose the differences of the parties, and shall make such order or orders in the premises, from time to time, as the facts and the circumstances warrant. Any such order shall be subject to review as are other orders of the commission.

Part III—Labor Relations.

To effectuate the purposes of this Act, the district boards and code members shall accept the following conditions which shall be contained in said code:

(a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion of employers, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and no employee and no one seeking employment shall be required as a condition of employment to join any company union.

(b) Employees shall have the right of peaceable assemblage for the discussion of the principles of collective bar-

gaining, shall be entitled to select their own check-weighman to inspect the weighing or measuring of coal, and shall not be required as a condition of employment to live in company houses or to trade at the store of the employer.

(c) A Bituminous Coal Labor Board, hereinafter referred to as "Labor Board," consisting of three members, shall be appointed by the President of the United States by and with the advice and consent of the Senate, and shall be assigned to the Department of Labor. The chairman shall be an impartial person with no financial interest in the industry, or connection with any organization of the employees. Of the other members, one shall be a representative of the producers and one shall be a representative of the organized employees, each of whom may retain his respective interest in the industry or relationship to the organization of employees. The Labor Board shall, with due regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation and duties of a secretary and necessary clerical and other assistants. The members shall serve for a period of four years or until the prior termination of this Act, and shall each receive compensation at the rate of $10,000 per annum and necessary traveling expenses. Any person appointed to fill a vacancy shall be appointed only for the unexpired term of his predecessor in office. Decisions of the Labor Board may be made by a majority thereof.

(d) The Labor Board shall sit at such places as its duties require, and may appoint an examiner to report evidence for its finding in any particular case. It shall notify the parties to any dispute of the time and place of the taking of evidence, or the hearing of the cause, and its finding of facts supported by any substantial evidence shall be conclusive upon review thereof by any court of the United States. It shall transmit its findings and order to the parties interested and to the Commission. The Commission shall take no action thereon for sixty days after the entry of the order of the Labor Board; and if within such sixty days an appeal is taken under the provisions of section 16

of this Act, no action on such finding and order shall be taken by the Commission during the pendency of the appeal.

(e) The Labor Board shall have authority to adjudicate disputes arising under subsections (a) and (b) of this part III, and to determine whether or not an organization of employees has been promoted, or is controlled or dominated by an employer in its organization, management, policy, or election of representatives; and for the purpose of determining who are the freely chosen representatives of the employees the Board may order and under its supervision may conduct an election of employees for that purpose. The Labor Board may order a code member to meet the representatives of its employees for the purpose of collective bargaining.

(f) The Labor Board may offer its services as mediator in any dispute between a producer and its employees where such dispute is not determined by the tribunal set up in a bona fide collective contract; and upon the written submission by the parties requesting an award on a stated matter signed by the duly accredited representatives of the employer and employees, the Labor Board may arbitrate the matter submitted.

(g) Whenever the maximum daily and weekly hours of labor are agreed upon in any contract or contracts negotiated between the producers of more than two-thirds the annual national tonnage production for the preceding calendar year and the representatives of more than one-half the mine workers employed, such maximum hours of labor shall be accepted by all the code members. The wage agreement or agreements negotiated by collective bargaining in any district or group of two or more districts, between representatives of producers of more than two-thirds of the annual tonnage production of such district or each of such districts in a contracting group during the preceding calendar year, and representatives of the majority of the mine workers therein, shall be filed with the Labor Board and shall be accepted as the minimum wages for the various classifications of labor by the code members operating in such district or group of districts.

Organization of the Code.

SEC. 5. (a) Upon the appointment of the Commission it shall at once formulate said code and assist in the organization of the district boards as provided for in section 4, and shall prepare and supply to all coal producers forms of acceptance for membership therein. Such forms of acceptances, when executed, shall be acknowledged before any official authorized to take acknowledgments.

(b) The membership of any such coal producer in such code and his right to a drawback on the taxes levied under section 3 of this Act, may be revoked by the Commission upon written complaint by any party in interest, after a hearing, with thirty days' written notice to the member, upon proof that such member has willfully failed or refused to comply with any duty or requirement imposed upon him by reason of his membership; and in such a hearing any party in interest, including the district boards, other code members, consumers, employees, and the Commissioner of Internal Revenue, shall be entitled to present evidence and be heard: *Provided,* That the Commission, in its discretion, may in such case make an order directing the code member to cease and desist from violations of the code and upon failure of the code member to comply with such order the Commission may reopen the case upon ten days' notice to the code member affected and proceed in the hearing thereof as above provided.

The Commission shall keep a record of the evidence heard by it in any proceeding to cancel or revoke the membership of any code member and its findings of fact if supported by any substantial evidence shall be conclusive upon any proceeding to review or restrain the action and order of the Commission in any court of the United States.

When an alleged violation of the code relates to the provisions of part III of section 4 of this Act, the Commission shall accept as conclusive the certified findings and orders of the Labor Board and inquire only into the compliance or noncompliance of the code member with respect thereto.

(c) Any producer whose membership in the code and whose right to a drawback on the taxes as provided under this Act has been canceled, shall have the right to have his membership restored upon payment by him of all taxes in full for the time during which it shall be found by the Commission that his violation of the code or of any regulation thereunder, the observance of which is required by its terms, shall have continued. In making its findings under this subsection the Commission shall state specifically (1) the period of time during which such violation continued, and (2) the amount of taxes required to be paid to bring about reinstatement as a code member.

(d) Any code member who shall be injured in his business or property by any other code member by reason of the doing of any act which is forbidden or the failure to do any act which is required by this Act or by the code, may sue therefor in any district court of the United States in the district in which the defendant resides, or is found or has an agent, without respect to the amount in controversy, and shall recover three-fold damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

SEC. 6 (a) All rules, regulations, determinations, and promulgations of any district board shall be subject to review by the Commission upon appeal by any producer and upon just cause shown shall be amenable to the order of the Commission; and appeal to the Commission shall be a matter of right in all cases to every producer and to all parties in interest. The Commission may also provide rules for the determination of controversies arising under this Act by voluntary submission thereof to arbitration, which determination shall be final and conclusive.

(b) Any person aggrieved by an order issued by the Commission or Labor Board in a proceeding to which such person is a party may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a

written petition praying that the order of the Commission or Labor Board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission or Labor Board, as the case may be, and thereupon the Commission or Labor Board, as the case may be, shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, and enforce or set aside such order, in whole or in part. No objection to the order of the Commission or Labor Board shall be considered by the court unless such objection shall have been urged below. The finding of the Commission or Labor Board as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission or Labor Board, the court may order such additional evidence to be taken before the Commission or Labor Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission or Labor Board, as the case may be, may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, and enforcing or setting aside, in whole or in part, any such order of the Commission or Labor Board, as the case may be, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

The commencement of proceedings under this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(c) If any code member fails or neglects to obey any order of the Commission while the same is in effect, the Commission in its discretion may apply to the Circuit Court of Appeals of the United States within any circuit where such code member resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such code member and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as to facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

The Commission may modify its findings as to the facts or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which if supported by substantial evidence shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(d) The jurisdiction of the Circuit Court of Appeals of the United States or the United States Court of Appeals

for the District of Columbia, as the case may be, to enforce, set aside, or modify orders of the Commission or Labor Board shall be exclusive.

Such proceedings in the Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia, as the case may be, shall be given precedence over other cases pending therein, and shall be in every way expedited.

SEC. 7. All provisions of the law, including penalties and refunds, relating to the collection and disposition of internal revenue taxes, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable with respect to taxes imposed under this Act.

SEC. 8. (a) The members of the Commission and of the Labor Board are authorized to administer oaths to witnesses appearing before their respective boards; and, for the purpose of conducting its investigations, said Commission or the said Labor Board shall have full power to issue subpenas and subpenas duces tecum, which shall be as nearly as may be in the form of subpenas issued by district courts of the United States. In case any person shall fail or refuse to obey such subpena it shall be the duty of the Commission, or the Labor Board, through its chairman, to make application to the District Court of the United States setting forth the issue and service of such subpena and the refusal of the person to obey the same and requesting such court to compel such person to appear before such court and show lawful cause for such refusal. Upon the filing of such application with the clerk of such court, it shall be the duty of the judge thereof, either in term time or vacation, to forthwith enter an order of record, requiring such person to appear before such court at a time stated in said order within three days from such entry, and show cause why he should not be required to obey such subpena, and upon his failure to show cause it shall be the duty of the court to order such witness to appear before the said Commission or Labor Board and give such testimony or produce such evidence as may be lawfully required by said Commission or Labor Board. The district court, either in term time or vacation, shall have full

power to punish for contempt as in other cases of refusal to obey the process and order of such court.

(b) In the investigation of any complaint or violation of the code, or of any rule or regulation the observance of which is required under the terms thereof, the Commission or the Labor Board, as the case may be, shall have power to require such reports from, and shall be given access to inspect the books and records of, code members to the extent deemed necessary for the purpose of determining the complaint.

SEC. 9. Should any producer or producers of bituminous coal not accept and maintain membership under the code set out in section 4 of this Act, he or they shall in addition to the tax herein provided and without the privilege of any drawback thereon, be held subject to other Acts of Congress regulating industries and their labor relations or providing for codes of fair competition therein: *Provided*, That the employees of all producers shall have the right of self-organization and collective bargaining through representatives of their own choosing free from the interference, restraint, or coercion of employers or their agents, all as set forth in section 4, part III (a) and (b), of this Act.

SEC. 10. (a) The Commission may require reports from producers and may use such other sources of information available as it deems advisable, and may require producers to maintain a uniform system of accounting of costs, wages, operations, sales, profits, losses, and such other matters as may be required in the administration of this Act. No information obtained from a producer disclosing costs of production or sales realization shall be made public without the consent of the producer from whom the same shall have been obtained, except where such disclosure is warranted by a controversy with the producer over any order of the Commission and except that such information may be compiled in composite form in such manner as shall not be injurious to the interests of any producer and, as so compiled, may be published by the Commission.

(b) Any officer or employee of the Commission or of any district board who shall, in violation of the provisions

of subsection (a), make public any information obtained by the Commission or the district board, without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $500, or by imprisonment not exceeding six months, or by both fine and imprisonment, in the discretion of the court.

(c) If any producer required by this Act or the code to file a report shall fail to do so within the time fixed for filing the same, and such failure, shall continue for thirty days after notice of such default, the producer shall forfeit to the United States the sum of $50 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the producer has his principal office or in any district in which he shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeiture.

SEC. 11. State laws regulating the mining of coal not inconsistent herewith are not affected by this Act.

SEC. 12. No coal may be delivered upon a contract made prior to the effective date of this Act at a price below the minimum price at the time of delivery upon such contract, as established pursuant to Part II of section 4 of this Act, and such contract shall be invalid and unenforceable: *Provided*, That this prohibition shall not apply (a) to a lawful and bona fide written contract entered into prior to October 2, 1933; nor (b) to a lawful and bona fide written contract entered into subsequent to that date and prior to May 27, 1935, at not less than the minimum price current as published under the Code of Fair Competition for the Bituminous Coal Industry, pursuant to the National Industrial Recovery Act, at the time of making of such contract; nor (c) to a lawful and bona fide written contract entered into on or after May 27, 1935, and prior to the date of the approval of this Act, at not less than the mini-

mum price for current sale as published under said code of fair competition, as at May 27, 1935.

SEC. 13. Any combination between producers creating a marketing agency for the disposal of competitive coals in interstate commerce at prices to be determined by such agency or by the agreement of the producers operating through such agency, shall be unlawful as a restraint of interstate trade and commerce within the provisions of the Act of Congress of July 2, 1890, known as the Sherman Act, and Acts amendatory and supplemental thereto, unless such marketing agency shall have been approved by the Commission as provided in section 4 of this Act.

SEC. 14. (a) No bituminous coal shall be purchased by the United States, or any department or agency thereof, produced at any mine, where the producer has not complied with the provisions of the code set out in section 4 of this Act.

(b) Each contract made by the United States, or any department or agency thereof, with a contractor for any public work, or service, shall contain a provision that the contractor will buy no bituminous coal to use on or in the carrying out of such contract from any producer except such producer be a member of the code set out in section 4 of this Act as certified to by the National Bituminous Coal Commission.

SEC. 15. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Other Duties of the Commission

SEC. 16. The Commission shall study and investigate the matter of increasing the uses of bituminous coal and the problems of its importation and exportation; and shall further investigate—

(1) The economic operations of mines with the view to the conservation of the national coal resources.

(2) The safe operation of mines for the purpose of minimizing working hazards, and for such purpose shall be authorized to employ the services of the Bureau of Mines.

(3) The rehabilitation of mine workers displaced from employment, and the relief of mine workers partially employed. The Commission's findings and recommendations shall be transmitted to the proper agency of the Government for relief, rehabilitation, and subsistence homesteads.

(4) The problem of marketing to lower distributing costs for the benefit of consumers.

(5) The Commission shall, as soon as reasonably possible after its appointment, investigate the necessity for the control of production of bituminous coal and methods of such control, including allotment of output to districts and producers within such districts, and shall hold hearings thereon, and shall report its conclusions and recommendations to the Secretary of the Interior for transmission by him to Congress not later than January 6, 1936.

SEC. 17. Upon substantial complaint that bituminous-coal prices are excessive, and oppressive of consumers, or that any district board, or producers' marketing agency, is operating against the public interest, or in violation of this Act, the Commission may hear such complaint, or appoint a committee to investigate the same, and its findings shall be made public; and the Commission shall make proper orders within the purview of this Act so as to correct such abuses. Complaints may be made under this section by any State or political subdivision of a State.

SEC. 18. To safeguard the interests of those concerned in the mining, transportation, selling, and consumption of coal, the Commission is hereby vested with authority to make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs and practices relating to the transportation of coal, and to prosecute the same. Before proceeding to hear and dispose of any complaint filed by another than the Commission, involving the transportation of coal, the Interstate Commerce Commis-

sion shall cause the Commission to be notified of the proceeding and, upon application of the Commission, shall permit the Commission to appear and be heard. The Interstate Commerce Commission is authorized to avail itself of the cooperation, services, records and facilities of the Commission.

SEC. 19. The term "bituminous coal" as used in this Act shall include all bituminous, semibituminous, and subbituminous coal and lignite. The term "producer" shall include all persons, firms, associations, corporations, trustees, and receivers engaged in mining bituminous coal. The term "captive coal" shall include all coal produced at a mine for consumption by the producer or by a subsidiary or affiliate thereof, or for use in the production of coke or other forms of manufactured fuel by such producer or subsidiary or affiliate.

SEC. 20. Section 3 of this Act shall become effective on the 1st day of the third calendar month after the enactment of this Act, unless the Commission shall not at that time have formulated the code and forms of acceptance for membership therein, in which event section 3 of this Act shall become effective from and after the date when the Commission shall have formulated the code and such forms for acceptance, which date shall be promulgated by Executive order of the President of the United States. All other sections of this Act shall become effective on the day of the approval of this Act.

SEC. 21. This Act shall cease to be in effect and any agencies established thereunder shall cease to exist on and after four years from the date of the approval of this Act.

SEC. 22. There is hereby authorized to be appropriated from time to time such sums as may be necessary for the administration of this Act.

SEC. 23. This Act may be cited as the "Bituminous Coal Conservation Act of 1935."

ANNEX TO ACT—SCHEDULE OF DISTRICTS.

Eastern Pennsylvania.

District 1. The following counties in Pennsylvania: Bedford, Blair, Bradford, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Elk, Forest, Fulton, Huntingdon, Jefferson, Lycoming, McKean, Mifflin, Potter, Somerset, Tioga.

Armstrong County, including mines served by the P. & S. R. R. on the west bank of the Allegheny River, and north of the Conemaugh division of the Pennsylvania Railroad.

Fayette County, all mines on and east of the line of Indian Creek Valley branch of the Baltimore and Ohio Railroad.

Indiana County, north of but excluding the Saltsburg branch of the Pennsylvania Railroad between Edri and Blairsville, both exclusive.

Westmoreland County, including all mines served by the Pennsylvania Railroad, Torrance, and east.

All coal-producing counties in the State of Maryland.

The following counties in West Virginia: Grant, Mineral, and Tucker.

Western Pennsylvania.

District 2. The following counties in Pennsylvania: Allegheny, Beaver, Butler, Greene, Lawrence, Mercer, Venango, Washington.

Armstrong County, west of the Allegheny River and exclusive of mines served by the P. & S. R. R.

Indiana County, including all mines served on the Saltsburg branch of the Pennsylvania Railroad north of Conemaugh River.

Fayette County, except all mines on and east of the line of Indian Creek Valley branch of the Baltimore and Ohio Railroad.

Westmoreland County, including all mines except those served by the Pennsylvania Railroad from Torrance, east.

Northern West Virginia.

District 3. The following counties in West Virginia: Barbour, Braxton, Calhoun, Doddridge, Gilmer, Harrison,

Jackson, Lewis, Marion, Monongalia, Pleasants, Preston, Randolph, Ritchie, Roane, Taylor, Tyler, Upshur, Webster, Wetzel, Wirt, Wood.

That part of Nicholas County including mines served by the Baltimore and Ohio Railroad and north.

Ohio.

District 4. All coal-producing counties in Ohio.

Michigan.

District 5. All coal-producing counties in Michigan.

Panhandle.

District 6. The following counties in West Virginia: Brooke, Hancock, Marshall, and Ohio.

Southern Numbered 1.

District 7. The following counties in West Virginia: Greenbrier, Mercer, Monroe, Pocahontas, Summers.

Fayette County, east of Gauley River and including the Gauley River branch of the Chesapeake and Ohio Railroad and mines served by the Virginia Railway.

McDowell County, that portion served by the Dry Fork branch of the Norfolk and Western Railroad and east thereof.

Raleigh County, excluding all mines on the Coal River branch of the Chesapeake and Ohio Railroad.

Wyoming County, that portion served by the Gilbert branch of the Virginian Railroad lying east of the mouth of Skin Fork of Guyandot River and that portion served by the main line and the Glen Rogers branch of the Virginian Railroad.

The following counties in Virginia: Montgomery, Pulaski, Wythe, Giles, Craig.

Tazewell County, that portion served by the Dry Fork branch to Cedar Bluff and from Bluestone Junction to Boissevain branch of the Norfolk and Western Railroad and Richlands-Jewell Ridge Branch of the Norfolk and Western Railroad.

Buchanan County, that portion served by the Richlands-Jewell Ridge branch of the Norfolk and Western Railroad and that portion of said county on the head waters of Dismal Creek, east of Lynn Camp Creek (a tributary of Dismal Creek).

Southern Numbered 2.

District 8. The following counties in West Virginia: Boone, Clay, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Wayne, Cabell.

Fayette County, west of, but not including mines of the Gauley River branch of the Chesapeake and Ohio Railroad.

McDowell County, that portion not served by and lying west of the Dry Fork branch of the Norfolk and Western Railroad.

Raleigh County, all mines on the Coal River branch of the Chesapeake and Ohio Railroad and north thereof.

Nicholas County, that part south of and not served by the Baltimore and Ohio Railroad.

Wyoming County, that portion served by Gilbert branch of the Virginian Railroad lying west of the mouth of Skin Fork of Guyandot River.

The following counties in Virginia: Dickinson, Lee, Russell, Scott, Wise.

All of Buchanan County, except that portion on the head waters of Dismal Creek, east of Lynn Camp Creek (tributary of Dismal Creek) and that portion served by the Richlands-Jewell Ridge branch of the Norfolk and Western Railroad.

Tazewell County, except portions served by the Dry Fork branch of Norfolk and Western Railroad and branch from Bluestone Junction to Boissevain of Norfolk and Western Railroad and Richlands-Jewell Ridge branch of the Norfolk and Western Railroad.

The following counties in Kentucky: Bell, Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Harlan, Jackson, Knott, Knox, Laurel, Lawrence, Lee, Letcher, Leslie, McCreary, Magoffin, Martin, Morgan, Owsley, Perry, Pike, Rockcastle, Wayne, Whitley.

The following counties in Tennessee: Anderson, Campbell, Claiborne, Cumberland, Fentress, Morgan, Overton, Roane, Scott.

The following counties in North Carolina: Lee, Chatham, Moore.

West Kentucky.

District 9. The following counties in Kentucky: Butler, Christian, Crittenden, Daviess, Hancock, Henderson, Hopkins, Logan, McLean, Muhlenberg, Ohio, Simpson, Todd, Union, Warren, Webster.

Illinois.

District 10. All coal-producing counties in Illinois.

Indiana.

District 11. All coal-producing counties in Indiana.

Iowa.

District 12. All coal-producing counties in Iowa.

Southeastern.

District 13. All coal-producing counties in Alabama.

The following counties in Georgia: Dade, Walker.

The following counties in Tennessee: Marion, Grundy, Hamilton, Bledsoe, Sequatchie, White, Van Buren, Warren, McMinn, Rhea.

Arkansas-Oklahoma

District 14. The following counties in Arkansas: All counties in the State.

The following counties in Oklahoma: Haskell, Le Flore, Sequoyah.

Southwestern.

District 15. All coal-producing counties in Kansas. All coal-producing counties in Texas. All coal-producing counties in Missouri.

The following counties in Oklahoma: Coal, Craig, Latimer, Muskogee, Okmulgee, Pittsburg, Rogers, Tulsa, Wagoner.

Northern Colorado.

District 16. The following counties in Colorado: Adams, Arapahoe, Boulder, Douglas, Elbert, El Paso, Jackson, Jefferson, Larimer, Weld.

Southern Colorado.

District 17. The following counties in Colorado: All counties not included in northern Colorado district.

The following counties in New Mexico: All coal-producing counties in the State of New Mexico, except those included in the New Mexico district.

New Mexico.

District 18. The following counties in New Mexico: Grant, Lincoln, McKinley, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Socorro.

Wyoming.

District 19. All coal-producing counties in Wyoming.

Utah.

District 20. All coal-producing counties in Utah.

North Dakota-South Dakota.

District 21. All coal-producing counties in North Dakota. All coal-producing counties in South Dakota.

Montana.

District 22. All coal-producing counties in Montana.

Washington.

District 23. All coal-producing counties in Washington.

Approved, August 30, 1935.